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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,816	07/03/2003	Bryan Stephenson	200209591-1	6863

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EXAMINER

LY, CHEYNE D

ART UNIT PAPER NUMBER

2168

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/613,816	Applicant(s) STEPHENSON, BRYAN	
	Examiner Cheyne D. Ly	Art Unit 2168	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,3-11, and 13-28 is/are rejected.
- 7) ☒ Claim(s) 2 and 12 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/17/05</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

1. Claims 1-28 are examined on the merits.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3-11, and 13-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Golson et al. (US 5761505 A) (Golson hereafter).
4. In regard to claim 1, Golson describes a method of managing modification of configuration states (column 1, lines 61-65, and column 2, lines 40-50) of a plurality of resources of multiple types (column 2, lines 25-29) in a dynamic data center (column 5, lines 57-67, and Figure 1) comprising:
 - a. Creating a modification policy for said resources (column 6, lines 8-9). It is noted that the instant specification does not specifically define the limitation of “modification policy.” The exemplary disclosure (page 7, lines 5-14) discloses “modification policy is created to specify various parameters for controlling operation of the configuration state manager” wherein the disclosure of Golson cited above has been interpreted to anticipate the limitation as describe by the instant specification.

- b. Obtaining a new medication for a configuration state of resources of a particular type (column 1, lines 61-65, column 2, lines 40-50, and column 5, lines 24-27);
and
 - c. Automatically performing (column 2, line 45) said new modification to said configuration state of said resources of said particular type (column 7, lines 56-60, and column 8, lines 29-45) based on said modification policy (column 6, lines 8-9) by utilizing a resource pool (column 2, lines 55-63) without degrading a level of service provided by said resources of said particular type (column 3, lines 19-31), wherein said resource pool includes a plurality of available resources of multiple types (column 2, lines 25-28).
- 5. In regard to claim 3, said dynamic data center is a utility data center (column 5, lines 57-67).
 - 6. In regard to claim 4, said configuration state includes a firmware configuration state (column 5, line 34-35). It is noted that the limitation of firmware has been attributed with a customary and ordinary meaning of computer programming instructions that are stored in a read-only memory unit rather than being implemented through software.
 - 7. In regard to claim 5, said configuration state includes an operating system configuration state (column 5, line 31).
 - 8. In regard to claim 6, said configuration state includes an application configuration state (column 5, lines 44-45).
 - 9. In regard to claim 7, said new modification is an update (column 3, lines 19-23).

10. In regard to claim 8, said plurality of resources includes a resource that is one of a server (column 4, lines 23-43).
11. In regard to claim 9, said obtaining said new modification includes testing said new modification (column 7, line 60, to column 8, line 6).
12. In regard to claim 10, said obtaining said new medication includes determining whether said new modification is certified for use in said dynamic data center (column 5, lines 24-27).
13. In regard to claims 11, 13-21, 23-28, Golson discloses a computer-readable medium and system (column 4, lines 9-22) for implementing the method cite above.
14. In regard to claim 22, Golson discloses a graphical user interface to enable creation of said modification policy (column 5, lines 42-56, Figure 2, and column 6, line 56, to 25).

CONCLUSION

15. Claims 2 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
16. Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance.

Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent

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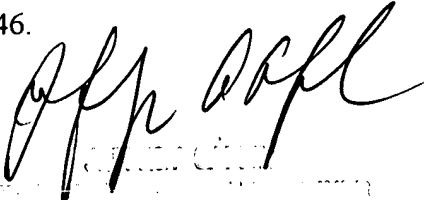
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17. For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199. The USPTO's official fax number is 571-272-8300.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Dune Ly, whose telephone number is (571) 272-0716. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin, can be reached on (571) 272-4146.

C. Dune Ly / *cn*
Patent Examiner
1/20/06



Official USPTO stamp with the signature of C. Dune Ly over it.